

**REMARKS**

This Amendment is responsive to the Office Action mailed on September 8, 2006. Claims 1, 3-7, 9, 10, 12-15, 17-19, 21, 24, and 25 are amended. Claims 1-25 are pending.

The Examiner has indicated that claims 8-14 contain allowable subject matter.

Claims 1-7 and 15-25 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lerch (US 6,921,401).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

**Discussion of Amended Claims**

Claims 1, 3-7, 9, 10, 12-15, 17-19, 21, 24, and 25 are amended for clarity, to improve readability, and to overcome potential antecedent basis problems in the claim language.

**Discussion of Lerch**

Claims 1-7 and 15-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lerch. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Lerch does not meet the requirements for an anticipation rejection.

The Examiner states that Lerch discloses an implant comprising an inner bearing element 18 and an outer bearing element 20, wherein, when the bearing elements approach one another, the bearing elements are connected together by means for a latching or clamping connection 40, 53 (Office Action, page 2).

The elements 40, 53 are shown in Figure 2 of Lerch. The corresponding description of these elements can be found in Column 9, lines 4 to 53. The elements 40 and 53 are holding bodies for maintaining a gap between adjacent bone plates (see, e.g., Column 20, lines 21-24). In Column 9, lines 24 to 28 it is disclosed that the intermediate space 50, which is defined by two

opposite pin parts 46 and 48 of the holding body 40, defines essentially how far the adjacent bone plates can be pushed towards each other in an incision gap. When the two pin parts 46 and 48 abut against each other, the minimum distance between the bone plates is reached.

Further, it is evident from Figure 2 of Lerch that the holding bodies 40 and 53 cannot touch each other, as they are separated by the bone segments 10 and 12. Thus, the elements 40 and 53 of Lerch do not form any type of latching or clamping connection.

Lerch does not disclose or remotely suggest that the bearing elements are connected together by means of a latching or clamping connection and a connection by means of a thread-like tensioning element, as claimed by Applicants. The holding bodies 40, 53 cannot establish a latching or clamping connection.

As Lerch does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(e) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Lerch, taken alone or in combination with any of the other prior art of record.

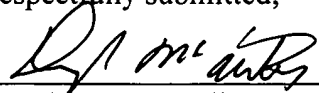
Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(e) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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